

Exhibit F

April 24, 2019

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE: CATHODE RAY TUBE (CRT)
ANTITRUST LITIGATION,
CASE NO. 3:07-CV-05944-JST

DEPOSITION OF CURTIS MILHAUPT
San Francisco, California
Wednesday, April 24, 2019

Reported by: Ashley Soevyn, CSR No. 12019
Job No. 796715
Pages 1 - 148

Curtis B. Milhaupt
April 24, 2019

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1 UNITED STATES DISTRICT COURT

2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

3 SAN FRANCISCO DIVISION

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6 IN RE: CATHODE RAY TUBE (CRT)
ANTITRUST LITIGATION,

7 CASE NO. 3:07-CV-05944-JST

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13 Deposition of CURTIS MILHAUPT taken on
14 behalf of the Irigo Defendants, at Baker Botts, 101
California Street, 36th Floor, San Francisco,
15 California, beginning at 9:38 a.m. and ending at
2:30 p.m. on Wednesday, April 24, 2019, before
16 ASHLEY SOEVYN, Certified Shorthand Reporter No.
12019.

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April 24, 2019

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April 24, 2019

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I N D E X

DEPOSITION OF CURTIS MILHAUPT

EXAMINATION BY: PAGE

MR. HUSTON 7

Curtis B. Milhaupt
April 24, 2019

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E X H I B I T S

MILHAUPT DEPOSITION

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Curtis B. Milhaupt
April 24, 2019

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1 San Francisco, California, April 24, 2019

2 9:38 a.m.

3
4 CURTIS MILHAUPT,

5 having been administered an oath, was examined and
6 testified as follows:

7
8 EXAMINATION

9 BY MR. HUSTON:

10 Q Good morning, Professor Milhaupt. How
11 are you?

12 A I'm doing well. Thank you. How are you?

13 Q Thank you for being here. My name is
14 Peter Huston, and I represent the Irico Defendants
15 in this case, and I will be taking today's
16 deposition asking you some questions. I would like
17 to start by just asking you whether you've had your
18 deposition taken before?

19 A I have.

20 Q And how many times?

21 A Once.

22 Q And when was that?

23 A That was, if memory serves me, it was in
24 January of 2016.

25 Q All right. So that's pretty recently,

1 it's been an ongoing learning process of research,
2 collaboration, interviews, and study.

3 Q How long did that sabbatical last?

4 A It was the fall of 20 -- fall of 2006.

5 Q So a few months?

6 A Yes.

7 Q Can you spell the name of the university
8 for our court reporter and for myself?

9 A Certainly. Tsinghua. I believe the
10 English spelling is T-S-I-N-G-H-U-A.

11 Q And so your first published scholarship
12 on the subject was in 2013; is that right?

13 A Correct.

14 Q Would you consider yourself an expert on
15 Chinese law?

16 A In general, no.

17 Q And probably the answer to that question
18 presumes the answer to the next, but would you
19 consider yourself an expert on Chinese Criminal Law?

20 A No.

21 Q And you mentioned that you took up
22 Mandarin. Do you speak Chinese?

23 A No. I have some familiarity with the
24 language from my period of study, and I also have
25 some familiarity with Chinese characters because of

1 BY MR. HUSTON:

2 Q Okay. What is your -- put in your words,
3 what you believe that test to be.

4 A Well, the statute has essentially two
5 different parts. One is an agency or
6 instrumentality test, which asks whether an entity
7 is majority owned or wholly owned by a government.
8 And there is a second test, which asks whether
9 entity, which does not fall into that first
10 category, which is quote/unquote organ of a foreign
11 government.

12 Q And I've seen those two prongs, if you
13 will, referred to as the ownership test and the
14 organ test. Does that ring a bell with you?

15 A Well --

16 MR. RUSHING: Object to the form.

17 THE WITNESS: I mean, I'm not sure I can
18 say it rings a bell with me. Those sound like
19 reasonable ways of referring to a test. I'm not
20 sure I've read that or seen that as the definitive
21 way of describing those tests.

22 BY MR. HUSTON:

23 Q Fair enough. Is it your understanding
24 that the Irico Group is wholly owned by a political
25 subdivision of the Chinese government?

1 A Yes.

2 Q Is it fair to say that the bulk of your
3 declaration concerns Irico Display?

4 A Yes.

5 MR. RUSHING: Object to the form.

6 BY MR. HUSTON:

7 Q Are all of the opinions that you've
8 reached in this engagement reflected in your
9 declaration?

10 A Yes.

11 Q Is it accurate to say that you do not
12 express an opinion on the ultimate question of
13 whether the Foreign Sovereign Immunities Act applies
14 or doesn't apply?

15 A Yes.

16 Q Irico Display is part of the Irico Group,
17 correct?

18 A That's correct.

19 Q And in that group, the Irico Group is the
20 core company, correct?

21 MR. RUSHING: Object to the form.

22 THE WITNESS: Yes.

23 BY MR. HUSTON:

24 Q Turning back to your CV, are there any
25 publications or scholarship that you've authored on

1 the subject of China that aren't reflected on your
2 CV?

3 A Not to my knowledge.

4 Q Are you -- do you have any current plans
5 or thought that you might offer additional opinions
6 in the future in addition to what's been set forth
7 in your declaration?

8 A In this case?

9 Q Correct. Correct.

10 A I have no current plans to do so.

11 Q Have you been asked to do that?

12 A No, I have not.

13 Q Okay. Looking at paragraph 8 of your
14 declaration, there is an article referenced about
15 halfway down the paragraph, "Is the US Ready for FDI
16 from China? Lessons from Japan's Experience in the
17 1980s."

18 Do you see that?

19 A Yes, I do.

20 Q What does FDI stand for?

21 A Foreign direct investment.

22 Q Is that referring to investments that
23 Chinese entities or individuals would be making into
24 the United States?

25 A Correct.

1 MR. RUSHING: Object to the form.

2 THE WITNESS: I would hesitate to give my
3 own characterization. I'm not a political
4 scientist. The term "party-state" is commonly used
5 as a kind of shorthand for this parallel structure,
6 but I would not hold myself out as having particular
7 expertise in describing or explaining Chinese
8 governments or organizations.

9 BY MR. HUSTON:

10 Q What, in your mind, what is the role of
11 the communist party in China?

12 MR. RUSHING: Object to the form.

13 THE WITNESS: It is a -- I think as I
14 stated earlier, it is a political party with a
15 monopoly on political power in China.

16 BY MR. HUSTON:

17 Q Turn to page 525 of Exhibit 8537. And
18 down at the bottom of the page, there is a sentence
19 that maybe gets at what you're talking about. It
20 says:

21 "SASAC shares decision right on senior
22 management appointments with the
23 Chinese Communist Party (CCP) in a
24 highly institutionalized arrangement
25 whereby the top positions in the most

1 China. The communist party is, I don't think it's a
2 controversial statement to say that the party itself
3 is kind of above the law. And so at some level, all
4 organizations in China are subject to the authority
5 of the communist party. But I think this is -- so I
6 would say that I think this is a little bit
7 overbroad and also I would not equate the communist
8 party necessarily with the party-state as we
9 discussed earlier.

10 BY MR. HUSTON:

11 Q The next sentence reads:

12 "The Party-state controls SOEs through
13 both general requirements on policy
14 compliance and specific powers such as
15 appointing senior executives of SOEs."

16 Do you agree or disagree with that?

17 A Again, I think this is conflating several
18 different things here. I would be more specific.
19 SASAC as a matter of government, as a matter of law
20 and a matter of government organization, it is SASAC
21 that has the appointments power. Now, SASAC does
22 have within it a party committee. The extent to
23 which that committee is actually calling the shots,
24 I could not tell you, but I think that this is
25 improperly eliminating SASAC from the picture. And

1 I would say further, both the general requirements
2 on policy compliance, that's a very general
3 statement -- pardon me. That's a very general
4 statement. I really don't know what that would be
5 referring to.

6 Q So the next highlighted section says:
7 "State and business maybe very close in
8 some other economies with state-owned
9 enterprises, such as Korea, Japan,
10 Singapore or Brazil, but a degree of
11 direct control over state-owned
12 enterprises by an economy's ruling
13 parties is rarely seen in other open
14 economies."

15 You've mentioned that you are a professor
16 of comparative law and that you've looked at some of
17 these other countries. Do you see a difference in
18 how state-owned enterprises run in China versus
19 these other countries mentioned?

20 A The most relevant would be Singapore.
21 Korea and Japan have relatively few SOEs. Singapore
22 uses a holding company model, Temasek -- excuse me.
23 In terms of the size of the capital market under a,
24 at least a sensible government control, Singapore
25 would be similar to China. Singapore has a

1 different governmental structure for -- different
2 ownership structure for its SOES. That's certainly
3 true.

4 Q The next highlighted sentence reads:

5 "... the Party-state in China directly
6 controls not only the personnel but
7 also sometimes the operation of
8 state-owned enterprises, bypassing the
9 legal governance structure consisting
10 of the board of directors and
11 management."

12 Do you agree with that or disagree?

13 MR. RUSHING: Object to the form.

14 THE WITNESS: Again, I -- the party-state
15 directly controls not only the personnel but also
16 sometimes the operation of SOEs. I mean, I can only
17 restate what I've said, which is that SASAC has the
18 authority to appoint personnel in the -- at the
19 group level, not formally the party. The party may
20 be involved in that. I don't know. There is, as I
21 said, a party committee within SASAC. And the party
22 generally is involved in personnel matters. As to
23 the next part of this sentence, also sometimes the
24 operation of SOEs bypassing the governance
25 structure, if this is a statement about what may

1 Q And then the next sentence reads:

2 "Political governance is a
3 CCP-dominated process that actually
4 controls personnel appointments and
5 decision-making in SOEs."

6 CCP refers to the Communist -- the
7 Chinese Communist Party, correct?

8 A Correct.

9 Q And, you know, we've discussed this
10 already, but I take it, you take issue with that
11 sentence?

12 A In the same way that I did before. It's
13 conceivable that the party is -- can operate through
14 SASAC, but that is certainly not the way the system
15 is structured.

16 Q And then the next sentence says:

17 "The two structures run separately,
18 although the same group of players
19 participates in the decision-making
20 processes of both structures."

21 A Well, I think what this is in reference
22 to is the fact that, as I've explained in some of my
23 scholarship as well and as we alluded to earlier,
24 there is a corporate structure and there is a
25 parallel party committee structure internal to the

1 firm, which stands outside the corporate law. And
2 it is common for senior executives in the company's
3 under SASAC's supervision to wear two hats, a
4 corporate hat and a party hat. I think that's what
5 he's referring to.

6 Q And then the last sentence in this
7 highlighted portion says:

8 "In most cases, the informal, nonlegal,
9 rules in political governance, which
10 run in the shadows, prevail over the
11 legal rules in China's corporate and
12 securities laws."

13 What is your reaction to that answer?

14 MR. RUSHING: Object to the form.

15 MR. HUSTON: Do you agree with that
16 statement?

17 MR. RUSHING: Object to the form.

18 THE WITNESS: Well, you know, scholarship
19 has to be pitched at a certain level of generality,
20 and so as a very general statement, I would say that
21 he's certainly correct that there are these parallel
22 structures. Where he says, "In most cases, the
23 informal, non-legal rules" et cetera "prevail over
24 the legal rules," again, I guess I would take issue
25 to that particularly with respect to publicly these

1 other shareholders, non-state
2 shareholders (if any) of the SOEs have
3 virtually no 'voice' when it comes to
4 crucial company decisions."

5 Do you see that?

6 A I do.

7 Q And do you think that that description
8 holds true for state-owned enterprises in the 2007
9 time period?

10 MR. RUSHING: Object to the form.

11 MR. HUSTON: Let me rephrase it.

12 BY MR. HUSTON:

13 Q What -- how much voice do you believe
14 that minority non-state shareholders had in
15 state-owned entities in 2007?

16 A I think they had the same degree of voice
17 that a minority shareholder in a U.S. or Japanese or
18 Korean company would have. That is not a lot of
19 voice, but I don't think that's unique to China in
20 anyway.

21 Q Okay. With respect to the power of
22 shareholders in Irico Display, do you have an
23 understanding of how voting worked at Irico Display,
24 what shareholders got to vote on, and how often, and
25 what sort of decisions they voted on?